

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

KHODARA ENVIRONMENTAL II, INC.,)
Plaintiff,)
v.) CIVIL ACTION NO. 2002-96J
CHEST TOWNSHIP,) JUDGE GIBSON
Defendant.)

MEMORANDUM OPINION and ORDER

GIBSON, J.

SYNOPSIS

This matter comes before the Court on Defendant, Chest Township's, Motion titled "Motion to Withdraw the Notice of Appeal" (Document No. 46). Despite this title, it is evident that the Defendant is seeking a voluntary dismissal under FED. R. APP. P. 42(a).

JURISDICTION/ VENUE

This Court lacks jurisdiction to consider the Defendant's Motion. Pursuant to Defendant's Notice of Appeal, the Third Circuit Court of Appeals docketed Defendant's appeal on June 27, 2005 at 05-3031. This Court cannot grant such a motion subsequent to the Third Circuit's docketing of the Defendant's appeal. *See* FED. R. APP. P. 42(a). Accordingly, this Court determines that it lacks jurisdiction to consider the Defendant's Motion.

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Defendant.)

ORDER

AND NOW, this 20th day of July, 2005, this matter coming before the Court on the Defendant's Motion titled, "Motion to Withdraw the Notice of Appeal." (Document No. 46). IT IS HEREBY ORDERED THAT this Court has determined that it lacks jurisdiction to consider the Defendant's Motion.

BY THE COURT:

Kim R. Wilson

**KIM R. GIBSON,
UNITED STATES DISTRICT JUDGE**

cc: Robert P. Ging, Esq.
David R. Overstreet, Esq.